IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE

WRIT PETITION NO. 5156 OF 2004

Ramchandran Ssundaram... . Petitioner

versus

Virendra Hari Patil & anr.,..... Respondent.

Shri R.G.Ketkar for the petitioner.
Shri A.G.Damle for respondent no.1.

CORAM; A.P. DESHPANDE, J.
DATED; 08TH OCTOBER, 2007

P.C.;

1. Rule. Rule made returnable forthwith. Taken up for final hearing by consent of parties.

2. An award has been passed by a sole arbitrator in the sum of Rs. 14.5 lacs in favour of the respondent and against the present petitioner. The petitioner has moved an application under section 34 of the Arbitration and Conciliation Act for setting aside the arbitraral award. It is undisputed that the application for setting aside the arbitraral award has been filed within time. The petitioner moved an application at Exh. 21 before the Extra Joint District Judge, Pune and sought an adjournment on the ground that his advocate was ill and bed ridden and was not in a position to conduct the case on the said

date. The court below has observed in the impugned order that the petitioner was cautioned that he should make alternate arrangement and the matter will not be adjourned to accommodate the ailing counsel. Despite this, no alternate arrangement has been made and an application on the same ground was moved for seeking adjournment. The court below has granted adjournment subject to the condition that the petitioner shall deposit 25% of the award amount in the court. The said impugned condition was stayed by this court, on account of which it appears that the proceedings on the file of the Court below have not moved forward.

3. The learned counsel for the petitioner has pointed out that direction to deposit 25% of the award amount, as a condition for grant of adjournment is unjust and unfair and some costs could have been saddled with a view to compensate the respondent. It is pointed out that under section 36 of the Act, once an application under section 34 is filed, the award does not become executable and hence a direction to deposit a sum of 25% of the arbitraral award is not sustainable in law. The learned counsel for the respondent has submitted that on account of pendency of this petition, no progress is made in the Misc. Application bearing No.253/03 pending on the file of the District Judge, Pune and hence the said application need to be

expeditiously heard and disposed of. Having regard to the totality of the facts and circumstances, I am of the clear view that the impugned order which goes to direct deposit of 25% of the award amount is unjust and hence deserves to be quashed and set aside. However, Misc. Civil Application No.253/03 need to be heard and decide expeditiously.

4. In the result, the writ petition is allowed. The impugned order passed below Exh.21 is quashed and set aside. The learned counsel appearing for the petitioner assures this court the petitioner's co-operation in an expeditious disposal of the Misc. Civil Application no.253/03. The learned counsel assures this court that the petitioner shall not seek any adjournment hereafter and the court below should be directed to dispose of the Misc. Civil Application within the time bound period. Hence I direct the Extra Joint District Judge, Pune to hear and decide the Misc. Civil Application No.253/03 as expeditiously as possible and preferably within a period of two months from today. Rule made absolute in the above terms.

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